



County of San Diego

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December 17, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

COMMENT LETTER – REVISED DRAFT PHASE II SMALL MS4 PERMIT

The County of San Diego appreciates the opportunity to comment on the revised Phase II Small MS4 Permit (Draft Phase II Permit). While the County will not be directly regulated through the Phase II Permit, key provisions will likely be precedential for future Phase I permit re-issuances and consequently we are compelled to provide comments at this time. It is important that municipal permits contain consistent policy provisions. This is of particular interest to the County as the San Diego Regional Water Quality Control Board moves toward adoption of a re-issued San Diego Regional MS4 Permit.

Receiving Water Limitations Language

The Receiving Water Limitations Provision (Provision D, pages 19-20) is an important and relevant issue for all municipal permittees within the State. While the revised order does not modify Provision D per se, it addresses the issue (see Finding #38, page 38; Provision I, page 140; and the Fact Sheet, pages 25-26) by creating a reopener clause. The State Water Board should not defer this issue until a later date (by the use of a reopener clause) and recommend that they address this issue in this Permit. Following the November 20, 2012 workshop, we believe the State Water Board has sufficient input and cause to develop a resolution. We understand that California Stormwater Quality Association (CASQA) has offered its support and assistance to the State Water Board in resolving this issue.

We urge the State Water Board to direct staff to work with CASQA to revise the Receiving Water Limitation Language in Provision D now and not defer to a later point in time. Specifically, we urge the State Water Board to remove or reform the Receiving Water

Limitations language from all MS4 permits, and to establish the iterative management approach to permit requirements. EPA issued permits in other states that do not include RWL prohibitions language. In California, the State Water Board has the discretion to reaffirm the policy set forth in prior Water Quality Orders (WQ 2001-15 and 99-05).

Attachment J – Central Coast Post-Construction Requirements

Our concerns with Attachment J are two-fold; policy/procedural and technical. First we are concerned with the apparent escalation in permit requirements being conducted by the various Water Board permit writers in drafting provisions for land development. Over the last few years we have seen the increase of land development requirements in each MS4 permit re-issuance with regard for neither the impact nor effectiveness of the prior development requirements nor the key hydrologic principles of low impact development. This lack of a rational and consistent approach to standards has created an uneven and subjective playing field for communities and developers across the State. Furthermore, the clear absence of any consensus within the State on land development requirements (particularly with respect to hydromodification management) is damaging to the credibility of the entire stormwater program.

Another policy/procedural related issue is the timing of the inclusion of Region 3 requirements into the Draft Phase II Permit. By appending the Central Coast requirements, and stating, “the Water Board expects to amend this Order to incorporate similar requirements for Permittees in the remainder of the State”, the Water Board has introduced an entirely new set of rules with insufficient time for Phase I or II permittees to fully evaluate the potential impacts of these standards. At a minimum, we believe it prudent to allow a full 5-year permit term to incorporate the requirements of Section E.12 and to assess their effectiveness before pursuing a new set of requirements. As discussed below, there are significant technical issues in the Region 3 requirements and any revisions would require opening the Phase II permit to amend a regional requirement at the state level.

It is worth noting that the post-construction requirements contained in Section E.12 have been through a thorough two-year review process including CASQA professionals, environmental NGOs, Permittees, and State Water Board staff. The result is a set of straightforward and implementable LID and baseline hydromodification controls accomplishing most or all of the Region 3 requirements. This direction is one that Phase I permittees could better follow.

With respect to technical issues the magnitude and scope of the Region 3 requirements are not appropriate for the following reasons:

- The Region 3 requirements are not only the most stringent and complex in the State; they are also unique and entirely untested. For example, there is no demonstrated environmental benefit from retaining a 95th percentile storm event on small projects (15,000 sf and greater) in urban areas. It is well established that water quality control

measures are most economical and efficient when they target small, frequent storm events that over time produce more total runoff than the larger, infrequent storms targeted for design of flood control facilities. Typically, design criteria for water quality control BMPs and baseline hydromodification controls are set to coincide with the “knee of the curve”, i.e., the point of inflection where the magnitude of the event (and corresponding cost of facilities) increases more rapidly than the number of events captured. In other words, targeting design storms larger than this point will produce volume retention gains but at considerable incremental cost. This approach is the very basis of the criteria in most Phase I MS4 permits and the draft Phase II permit for sizing stormwater control measures to capture the 85th percentile, 24-hour storm.

- The Central Coast sizing criteria was placed in the Region 3 requirements after the public review process was completed in that region. The sizing criteria uses an outdated and incorrectly applied Water Environmental Federation MOP 23 approach that multiplies the retention/water quality volume by 1.963 in order to capture “all events up to and including” the 85th or 95th, as appropriate.
- The retention and hydromodification requirements, and some of the LID requirements, are inconsistent and go beyond those of existing or proposed statewide, regional, or local Phase I or Phase II MS4 permits in California. For example, thresholds for hydromodification requirements are much lower than existing or proposed permits (15,000 square feet and 22,500 square feet of created/replaced impervious surface for runoff retention and peak matching, respectively). Post-project vs. pre-project peak matching is required for the 2 through 10-year storm, which is beyond most existing requirements and more appropriate for flood control facilities. The technical basis for these requirements is unclear and in the absence of demonstrated environmental benefit, there is no justification for the significant increased cost for their implementation.

We urge you to delete direct references to the Central Coast Post-Construction Requirements, including Attachment J, from the Draft Phase II Permit. As a permittee subject to a Phase I permit in the San Diego Region 9, we would prefer to see a statewide land development policy that establishes consistency where needed, but that defers key details to reflect local jurisdictional differences (i.e., hydrology, soil, topography, etc.). We are concerned that Phase II permit conditions as proposed will establish important precedent without the benefit of a full and open dialogue involving all affected Phase I permittees.

Ms. Townsend
Page 4
December 17, 2012

Thank you for your consideration of our concerns. We are hopeful that the final permit language will result in programs that make sense from both an environmental and economic standpoint. If you have questions, please contact Cid Tesoro, LUEG Program Manager, at (858) 694-3672 or cid.tesoro@sdcountry.ca.gov.

Sincerely,



CID TESORO, Manager
Department of Public Works

CT:TB:js

cc: Chairman Charles R. Hoppin, State Water Resources Control Board (SWRCB)
Vice Chairwoman Frances Spivy-Weber, SWRCB
Board Member Tam M. Doduc, SWRCB
Board Member Steven Moore, SWRCB
Board Member Felicia Marcus, SWRCB
Executive Director Tom Howard, SWRCB